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Date: 11/1/2011 2:44 PM

Subject: NPV

Attachments: Preserve EC vs NPVIC 2.doc

Redistricting and Elections Committee Members

Thank you for this opportunity to express my view against Michigan joining a National Popular Vote Interstate Compact. I have been interested in, and researching this issue since the 2000 Presidential Election. Attached is a brief presentation based on this research and study that has convinced me that the Electoral College is a vital foundation to the mixture of Federalism, Nationalism and Separation of Powers provided in our Constitution for the protection of our Liberty against an overpowering national government.

I am asking the clerk to enter this e-mail into the record for each member of the Committee to consider.

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**PROTECT UNITED STATES
CONSTITUTIONAL DEMOCRACY
PRESERVE THE ELECTORAL COLLEGE
THE ELECTION OF THE PRESIDENT BY
STATES**

Date: November 1, 2011

To: Members of the Michigan State House Members of the Standing Committee
Redistricting and Elections

Transparency

How many Michigan citizens are aware that there is a national movement called the National Popular vote that is lobbying the legislatures of all 50 states plus the District of Columbia - to assure the President of the United States is elected by direct, national, popular vote, and not by the Constitutional majority of states according to their respective representation in the Congress? How many Michigan Citizens are aware, that on December 11, 2008, HB 6610, was passed in our State House, to have the State of Michigan enter into an interstate compact to elect the President by direct vote? Further, that on May 21, 2009, SB 598, for that same purpose, was introduced into the State Senate and referred to its Committee on Ethics and Elections; that it died in committee; that if not for the State Senate, we could now be a member of this interstate compact? All citizens need to be aware that the United States Constitution despite any one's preference, does not provide,... nor did the Founders intend,... in fact,... rejected,- the national Direct Vote for the President.

Founding Fathers

Please note that it was the states that:
Declared Independence and established the First Principles of our Nation.
Fought the Revolutionary war.
Great Britain surrendered to, naming each one.
Crafted our United States Constitution.
Ratified our United States Constitution.
Established the United States Senate to protect the rights of the states as sovereign entities.
Ratify Amendments to the Constitution
Fought the Civil War to Preserve the Union

Federalist Papers

James Madison in Federalist No. 10 advocates a constitutional republic over direct democracy precisely to protect the individual from the will of the majority. And I quote, "A pure democracy can admit no cure for the mischiefs of faction. A common passion or interest- will be felt by a majority, and there is nothing to check the inducements to sacrifice the weaker party. Hence it is, that democracies have ever been found incompatible with personal security or the rights of property; and have, in general, been as short in their lives as they have been violent in their deaths

James Madison, in Federalist No.39, explains in meticulous detail there is direct (national) vote for the President within the states and indirect (Federal) vote of the President by States. The World Series in Baseball is an example. The winner of the Series is the one who wins the most games not the most runs. Americans understand and accept this concept very well.

Alexander Hamilton in Federalist No.68, "The Mode of Electing the President" explains that "No senator, representative or other person holding a place of trust or profit under the United States, can be of the numbers of the electors." State legislators by imposing an interstate compact that in effect, awards its state's Electoral Votes only to the national popular vote winner violates ~~this principle of the citizens of their respective states to appoint (vote) the Electors according to~~ their popular vote. Hamilton further states ".....that the people of each State (not a compact) shall choose a number of persons as elector, equal to the number of senators and representatives of *such State* in the national government, who shall assemble within the State, and vote for some fit person as President. Their votes (not a compact), thus given, are to be transmitted to the seat of the national government, and the person who *may happen to have a majority of the whole number of votes (not necessarily national popular)* will be the President."

The Constitutional Convention

There was long and heated debate at the Constitutional Convention, as to the manner in which the President should be elected. During this debate, the two remaining New York delegates who sided with the small states in their concern for their representation in the new national government, left the Convention never to return. Over a six day period and sixty ballots on this one issue, a big breakthrough came on the sixth day, *The Connecticut or Grand Compromise* on the representation of each of the states in the Congress;... proportional in the House and equal in the Senate, *facilitated the Compromise on how the President would be elected. It would be the same mixture as in the Congress.* They finally settled on the President and the Vice President be nominated by the chosen electors from each state. Each state is to be entitled to the same number of electors as the sum total of its Representatives and Senators. This provision gave each state the RIGHT, *to have the same weight in electing a President that it has in the legislative branch of Congress.*

The National Popular Vote Interstate Compact

The National Popular Vote movement is an advocate for Direct Vote for the President of the United States and contends that it is the only fair way to represent the national will of the people. Where previous attempts to abolish the Electoral College by Constitutional Amendment, have failed in the past, National Popular Vote has come up with is a plan, to use an interstate compact as a means to avoid this process.

The NPV states,- that once their Interstate Compact have enough member states to achieve 270 electoral votes, they will then be in a position *to add their member electoral votes* to the national popular vote presidential candidate winner, to assure that candidate has both majorities to take office. This eliminates the Constitutional designed electoral possibility that a candidate win the office with the majority of the Electoral votes by states and not the majority of the national popular vote. Therefore they are not legislatively abolishing the Electoral College Vote process, but using their proposed Interstate Compact (collective) member state's Electoral Votes regardless of outcome, to ensure that only a popular vote winner can be an Electoral Vote winner. Or is there a crisis of such magnitude on this issue, that the constitutional process of amendment for the abolishment of the Electoral College, which has failed in the past, must be accomplished,... by any means necessary?

Interpreting the United States Constitution

Let's more closely examine the NPV Constitutional claim and authority for this Interstate Compact. They claim their authority is derived from Article II, Section 1, Cl.2 which states that,

“Each State shall appoint, *in such Manner as the Legislature thereof may direct*, a Number of Electors equal to the whole Number of Senators and Representatives to which the state may be entitled in the Congress:” It is agreed that the states do have this control,... *but within their states*. The Interstate Compact effectively diminishes with the potential to eliminate, the constitutional influence of each of the state’s representation in the Congress in electing the President and the balance of power between the Legislative and Executive Branches.

On the other hand, Article I, Sec.10, Cl 3 of the Constitution states that “No State shall without the consent of Congress,enter into any Agreement or Compact with another State. As a matter of principle and law, would a Congress that takes an oath to uphold the laws of the Constitution,... agree to allow states,... a compact to reformulate our federalism, our structure of the federal government, our constitutional process for electing a president?

The NPV book “Every Vote Equal” has a whole Chapter 5 discussing how Federal Courts have ruled on Compacts and Agreements. Is it possible that a Court would rule in favor of this Compact? Argue for the Direct Vote of the President.... or against, the IC circumvents the established amending process set forth in Article V including the approval of “2/3 of both Houses...and the Legislatures of ¾ of the several states....” Of any proposed amendment. Article IV, Section 4 also comes into question. It states that: “The United States shall guarantee to every State in this Union a Republican Form of Government,..”

In 1787, when the Virginia delegation met prior to the opening of the Constitutional Convention, they were aware that there would be stiff opposition to any attempt to abolish the Articles of Confederation. They discussed how they were going to introduce the Virginia Plan, which effectively was going to abolish the Articles of Confederation. Virginia Governor Edmund Randolph, who was to introduce the Plan, suggested that he use language to “soften” the impact of the Plan’s resolutions, by stating they were for the purpose of addressing the weaknesses in the Articles,... and improving them... rather than abolish them. But as the delegates read the Plan’s resolutions as effectively abolishing the Articles, Randolph had to suffer the embarrassment of not speaking plainly as to the Plan’s real purpose. To state that the interstate compact does not effectively abolish the EC to me is equally disingenuous. In fact former MI Senate Bill 598 states that, “This agreement shall terminate if the Electoral College is Abolished.” And I agree with their anticipation because in my opinion, the exercise by this compact to effectively accomplish Direct Vote of the President, facilitates its demise.

Article II, Section 1 Clause 2 also states “but no Senator or Representative, or person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. One can argue that indirectly, our state legislators become Electors because by this compact they force the vote of the Constitutional Electors, citizens who hold no elected office, to surrender their state’s electoral votes... for whom they were pledged,... to the national popular winner regardless if it was in opposition! Can one deny that the People’s President,... who would now be independently national by popular vote, not increase his influence and power? Are we then not moving even farther away from a Federal Government to a more centralized National Government,- further from the intended States Right by design, to have the same weight in electing a President that it has in the legislative branch of the Congress?

The following are a select number of observations on the impact of the Interstate Compact on the election of our President. Professors Robert Hardaway, Professor of Law, University of Denver,

Sturm College of Law who collaborated with Professor Jim Riley Of Regis University, in protest to the State of Colorado House Bill 1299 to enter into this interstate compact in 2009.

Professor Hardaway

“In the case of a very close popular vote in a presidential election and a recount demanded; could a compact state force-, a non-compact state, to conduct a recount, if it were contrary to the law of the non-compact state? There is no provision in the U.S. Constitution, whereby one state can force another state to violate its own election laws or to otherwise enforce any agreement or compact.

Under the Interstate Compact, would presidential campaigns be more likely to campaign in under populated areas? Under the EC, candidates have an incentive to visit small states, since as in 2000, even the smallest states have electoral votes which can determine the winner in an election. Under the IC, the incentive would be to campaign only in the areas of the greatest concentration of population, in order to win the most popular votes.

Under the Electoral College, the “wrong winner” was elected 7% of the time. Here “wrong is defined as a candidate who won the EC but not the PV.”
(end of Hardaway quotes)

The Unit Rule aspect of awarding a State’s EV’s also comes in for harsh criticism by the NPV. 48 of the states use the “winner-take-all” or Unit Rule. Maine and Nebraska use the proportional method of awarding their EV’s by Districts and one by statewide vote. However, Nebraska is now considering going back to the Unit Rule. Constitutional scholars credit the Unit Rule with encouraging the formation of majorities through a process of coalition building, which encourages the harmonizing sentiment in our country. This institutional support or Constitutional majorities,- would be lost in a simple, direct national plebiscite. A direct national election would radicalize public opinion, endanger the rights of minorities, remove incentives to compromise and make it easier for extreme elements, to have a decisive role in our politics.”

I want to thank the Committee for the opportunity for citizens to express their views on this important issue, to preserve the Electoral College Process to elect the President as an important mixture of National and Federal Principles. I urge this committee to reject the NPVIC and preserve our Constitutional Democracy

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